

1 The Honorable James L. Robart
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10 UNITED STATES DISTRICT COURT
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WESTERN DISTRICT OF WASHINGTON

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA MOBILITY,
LLC, and GENERAL INSTRUMENT
CORPORATION,

Defendants.

NO. C10-1823-JLR

NOTICE OF NONPARTIES KYOCERA
CORPORATION AND KYOCERA
COMMUNICATIONS, INC.'S JOINDER
IN DEFENDANT'S MOTION TO SEAL
DOCUMENTS AND EXCLUDE
UNAUTHORIZED PERSONS FROM THE
COURTROOM

Nonparties Kyocera Corporation and Kyocera Communications, Inc. (collectively, "Kyocera") hereby join Motorola's Motion to Seal Documents and Trial Testimony and Exclude Unauthorized Persons From the Courtroom During Testimony Regarding Trade Secrets (Dkt. 495) as it pertains to the Trial Exhibit 3224 (Kyocera-Motorola license),¹ trial exhibits, and testimony regarding the terms of that license. There are compelling reasons for a narrowly tailored sealing of this information. In support of this notice, Kyocera offers the Declaration of Eric Klein, Corporate Secretary of Kyocera Communications, Inc. ("Klein Decl."), submitted herewith.

¹ The patent license agreement is between Kyocera Corporation, Kyocera Wireless Corporation and Defendant Motorola, Inc. (now Motorola Solutions, Inc., collectively, "Motorola"). Kyocera Communications, Inc. is the successor-in-interest to Kyocera Wireless Corporation.

1 Motorola recently informed Kyocera that it intends to use a trial exhibit and/or demonstrative
 2 that includes a summary of the terms of a license agreement between Kyocera and Motorola.
 3 Klein Decl. ¶ 3.

4 Kyocera considers the licensing terms and conditions set forth in the Kyocera-Motorola
 5 license to be confidential and trade secret information. Kyocera has done nothing to put that
 6 information at issue in this case, where it is not a party, and consented to use of that license on
 7 condition that confidentiality of its contents be maintained. Klein Decl. ¶ 5. Accordingly,
 8 Kyocera requests an order redacting and sealing the portion of any exhibits or demonstratives
 9 which states or references the terms and conditions of the Kyocera-Motorola license. Because
 10 Kyocera is a nonparty and does not have access to the exhibits or demonstratives, Kyocera seeks
 11 this order to require the parties to redact their summary exhibits and demonstratives. If the
 12 license itself is offered, it should be redacted and sealed in part. If the parties do not offer this
 13 exhibit, Kyocera does not want to make the license to become part of the public record. Thus, if
 14 and when the parties determine that the license will actually be offered as an exhibit, the parties
 15 should be required to submit a redacted version of the license.

16 Kyocera also requests that to effectuate the sealing described above the courtroom be
 17 closed when argument on this topic, testimony, or these exhibits is discussed.

18 There are compelling reasons for sealing this commercially sensitive information. The
 19 terms of Kyocera's patent licenses are not known to the public. *Id.* ¶ 4. The Kyocera-Motorola
 20 license contains highly proprietary business information regarding licensing terms and
 21 conditions. *Id.* ¶ 6. Public disclosure of the terms and conditions of Kyocera's license with
 22 Motorola would cause significant harm to Kyocera by negatively affecting Kyocera's ability to
 23 negotiate future licenses. *Id.* ¶ 7. License agreements have been consistently held by courts to
 24 meet the "compelling reasons" standard of the Ninth Circuit. *See, e.g., Elec. Arts, Inc. v. United*
25 States Dist. Court for the N. Dist. of Cal., 298 Fed. App'x 568, 569 (9th Cir. 2008) (pricing
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1 terms, royalty rates, guaranteed minimum payment terms of licensing agreement plainly fall
2 within the definition of “trade secrets”).

3 Knowledge of the detailed substantive and financial terms of previously nonpublic
4 agreements would provide a strategic windfall to Kyocera’s future licensing partners, enabling
5 them to gain unfair negotiating leverage. Klein Decl. ¶ 7. That leverage likely would manifest as
6 onerous licensing terms that could undermine Kyocera’s business competitiveness. *Id.* The law
7 gives district courts broad latitude to grant protective orders to prevent disclosure of materials for
8 many types of information, including, but not limited to trade secrets or other confidential
9 research, development, or commercial information. *Phillips ex rel. Byrd v. Gen. Motors Corp.*,
10 307 F.3d 1206 (9th Cir. 2002).

11 For these reasons, the Kyocera-Motorola license, trial exhibits, and testimony should be
12 sealed, and unauthorized persons should be excluded from the courtroom throughout testimony
13 regarding the terms of that license.

14 DATED this 6th day of November, 2012.

15 BYRNES KELLER CROMWELL LLP
16

17 By /s/ John A. Tondini
18 John A. Tondini, WSBA #19092

19 Byrnes Keller Cromwell LLP

20 1000 Second Avenue, 38th Floor

21 Seattle, WA 98104

22 Telephone: 206.622.2000

23 Facsimile: 206.622.2522

24 jtondini@byrneskeller.com

25 *Attorneys for Nonparties Kyocera Corporation and
26 Kyocera Communications, Inc.*

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on the 6th day of November, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel on record in the matter.

/s/ John A. Tondini
Byrnes Keller Cromwell LLP
1000 Second Avenue, 38th Floor
Seattle, WA 98104
Telephone: (206) 622-2000
Facsimile: (206) 622-2522
jtondini@byrneskeller.com